UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MARTIN FLEISHER, as trustee of the Michael Moss Irrevocable Life Insurance Trust II, and JONATHAN BERCK, as trustee of the John L. Loeb, Jr. Insurance Trust, on behalf of themselves and all others similarly situated,

Plaintiffs,

VS.

PHOENIX LIFE INSURANCE COMPANY,

Defendant.

ECF Case

Case No. 11 Civ. 8405 (CM)

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law, and upon all prior pleadings and proceedings held herein, defendant Phoenix Life Insurance Company will and hereby does move this Court, the Honorable Colleen McMahon presiding, at 500 Pearl Street, Room 1350, New York, New York 10007, pursuant to Federal Rule of Civil Procedure 12(b)(6) for an order dismissing, with prejudice, the Second through Fourth Claims for Relief from the Complaint, and granting such other and further relief as may be just and equitable.

Dated: New York, New York January 26, 2011

Of Counsel:

Waldemar J. Pflepsen Jr. (pro hac vice) Stephen J. Jorden* Jason H. Gould* Brian P. Perryman (pro hac vice) JORDEN BURT LLP 1025 Thomas Jefferson Street NW

Suite 400 East

Washington, DC 20007

(202) 965-8100

*Motion for full admission pending

DORSEY & WHITNEY LLP

By: s/ Patrick J. Feeley
Patrick J. Feeley
Jonathan R. Montcalm
51 West 52nd Street
New York, New York 10019
(212) 415-9200
feeley.pat@dorsey.com
montcalm.jonathan@dorsey.com

Attorneys for Defendant Phoenix Life Insurance Company